IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

MANAGING COMMITTEE, RAO TULARAM RASHTRYA UNNATI VIDYALAYA. V. SMT. MITHLESH YADAV AND OTHERS.

S.B.CIVIL WRIT PETITION NO.2407/2005.
Under Article 226 of the Constitution of India.

DATE OF ORDER: JUNE 2, 2005.

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.G.K.Vyas, for Petitioner.
Mr.D.P.Sharma, for Respondents.

By THE COURT:

REPORTABLE.

By this writ petition, the petitioner has prayed that the judgment dated 19.11.2004 (Annexure 4), passed by Respondent No.4 – the Non-Government Educational Institutions Tribunal, Rajasthan, Jaipur, in Appeal No.74/2002, may be quashed and set aside. The petitioner has also prayed that execution proceedings initiated by Respondent No.1 – Smt.Mithlesh Yadav pursuant to the aforesaid judgment dated 19.11.2004, which are pending before Respondent No. 5 – the

Civil Judge (Junior Division) & Judicial Magistrate, Ist Class, Bikaner may be stayed.

The brief facts giving rise to the instant petition are that Smt.Mithlesh Yadav – Respondent No.1 was initially appointed by the petitioner – Managing Committee (Institution) on the post of Teacher Grade II on 8.9.1990 (Annexure 5), after due selection, in accordance with law, as per averments made in the appeal. Since then, she has been continuously working on the said post. i.e., Teacher Grade II.

Thereafter, by order dated 1.4.2002, she was reduced in rank from the post of Teacher Grade II to Teacher Grade III, by the petitioner-Institution, against which she preferred an appeal before the Rajasthan Non-Government Educational Institutions Tribunal, Jaipur (hereinafter referred to as 'the Tribunal') under Section 19 of the Rajasthan Non-Government Educational Institutions Act, 1989 (for brevity, 'the Act of 1989').

The learned Tribunal, after hearing the learned counsel for both the parties, perusing the documents produced by them and considering their submissions, allowed the appeal of Respondent No.1 – Smt. Mithlesh Yadav and quashed and set aside the order dated 1.4.2002, passed by the Management Committee and directed the Management Committee to grant the pay scale of Teacher Grade II to the petitioner, with all

consequential benefits.

Aggrieved from the order dated 19.11.2004 (Annexure 4), passed by the learned Tribunal, the Management Committee has preferred the instant petition.

It is submitted by the learned counsel for the petitioner that the Managing Committee is a Institution registered under the Rajasthan Societies Registration Act and is getting 60% financial aid from the State Government in accordance with the Rajasthan Non-Government Educational Institutions Act, 1989 and the Rajasthan Non-Government Educational Institutions Rules, 1993(for short, 'the Rules, 1993'), framed thereunder.

It was averred in the appeal before the Tribunal that by order 8.9.1990 (Annexure 5), Respondent No.1 – Smt.Mithlesh Yadav was appointed on the post of Teacher Grade II, after due selection, in accordance with law and since then, she is performing her duties as Teacher Grade II with the petitioner – Institution.

It is further submitted by the learned counsel for the petitioner-Institution that on account of curtailment of financial aid and abolition of posts by the State Government, the impugned order dated 1.4.2002 has been passed by the Institution . As per the impugned order dated 1.4.2002, it is clear that there was no order for promotion of the petitioner. An administrative decision was taken to take the work of Teacher

Grade II from Smt.Mithilesh Yadav, by the Management, but after the curtailment of aid and abolition of the posts by the State Government, she was directed to perform the duties of the post of Teacher Grade III, upon which she was initially appointed.

It is also submitted by the learned counsel for the petitioner that no appointment order was issued to Respondent No.1 – Smt. Mithlesh Yadav, appointing her on the post of Teacher Grade II. According to the learned counsel, Respondent No.1 was, in fact, appointed as Teacher Grade III, but the work of Teacher Grade II was taken from her, therefore, she was paid the salary of the said post for some time. Thus, in this view of the matter, it cannot be said that she was appointed on the post of Teacher Grade II. No documentary evidence, in this regard, has been placed on record by Respondent No.1 to prove that she was appointed as Teacher Grade II. In fact, Respondent No. 1 was getting the pay scale of Teacher Grade III and it was merely on account of the fact that duties of Teacher Grade II were being taken from her, therefore, it was decided by the Management to compensate her by way of paying the difference of the amount out of the students' fund, as her services were being utilized for a higher post. Thus, to increase her efficiency, the additional amount of difference of pay was permitted to be paid to Respondent No.1. The difference of amount was paid to

Respondent No.1 from the funds of the petitioner-Institution.

Apart from that, it is mentioned in the order dated 1.4.2002 that the concession given to Respondent No.1 is withdrawn with immediate effect on account of a unanimous decision taken by the Managing Committee. The withdrawal of a special concession granted to an employee in the peculiar facts and circumstances of the case, in no manner, can be said to be an order of punishment or order of reversion.

It is contended by the learned counsel for the petitioner – Institution that the appeal against the order dated 1.4.2002 filed before the Tribunal under Section 19 of the Act, 1989 is not maintainable, and instead of filing an appeal under Section 19, Respondent No.1 should have preferred an appeal within a period of 90 days from the date of passing the order dated 1.4.2002, under Rule 40 of the Rules, 1993, as prior to passing the impugned order dated 1.4.2002, neither any disciplinary proceedings were initiated, nor the order under-challenge in the appeal was an order of punitive in nature. Thus, according to the learned counsel, the Tribunal should not have entertained the appeal of Respondent No.1 filed under Section 19 of the Act, 1989 and the same should have been dismissed by the Tribunal.

It is further contended by the learned counsel for the petitioner – Institution that the order dated 1.4.2002 was passed under Section 18 of the Act, 1989. According to the learned

counsel, the order dated 1.4.2002 was passed as there was no utility of Teacher Grade II in the petitioner – Institution. Apart from that, there were financial constraints on account of abolition of posts and withdrawal of grants-in-aid by the State Government. Therefore, keeping in view the over all situation of the matter, the order dated 1.4.2002, passed by the Management Committee (Petitioner - Institution), is in the interest of the Institution and is perfectly justified.

It is also contended by the learned counsel for the petitioner that the finding arrived at by the learned Tribunal in holding that the appeal is maintainable under Section 19 of the Act, is wholly illegal and contrary to the law, because under Rule 39 (2), it is clearly provided that an employee aggrieved from an order of the Managing Committee made under sub-rule (2) of Rule 39 may prefer an appeal to the State Government within 90 days of the date of receipt of such order. When the alternative remedy of filing an appeal before the State Government under Rule 40 of the Rules,1993 is available to Respondent No.1, then she should have availed of the same first, instead of filing an an appeal under Section 19 of the Act, 1989, before the Tribunal.

It is argued by the learned counsel for the Petitioner – Institution that if the grants-in-aid curtailed by the State Government is released to the Petitioner – Institution, then, the Institution is prepared to give again the financial benefits of

Teacher Grade II to Respondent No.1 – Smt.Mithlesh Yadav. Thus, in view of the aforesaid facts and circumstances of the case and in the absence of grants-in-aid from the State Government, it is not possible for the petitioner – Institution to give continuously financial concession to Respondent No.1.

It is also argued that the withdrawal of a special concession granted to an employee in the peculiar facts and circumstances of the case, in no manner, can be said to be an order of reversion or reduction in rank. The impugned order dated 1.4.2002 was purely an administrative order, based on a unanimous decision taken by the Competent Authority, i.e., the Managing Committee.

Apart from that, the financial position of the Institution was not sound as the posts have been abolished by the State Government, so in view of the curtailment of the financial aid by the State Government, the Petitioner – Institution is not in a position to keep continue the concession granted to Respondent No.1.

Lastly, it is submitted by the learned counsel for the petitioner-Institution that respondent No.1 was not, at all, appointed on the post of Teacher Grade II. In fact, she was given the benefits of Teacher Grade II at the level of management committee itself. It was pointed out that grants-in-aid was being given by the State Government for the post of

Teacher Grade III to Respondent No.1.

According to the learned counsel, Respondent No.1 was working on the post of Teacher Grade III, but difference of amount (between Grade II and Grade III) was being paid by the management committee itself, at its own level. When she was not appointed on the post of Teacher Grade II by the petitioner-Institution, there arises no question of reverting her from Grade II to Grade III. In this view of the matter, it is submitted that only facilities of Grade II , which were earlier given by the management, at its own level, were withdrawn by a unanimous decision vide order dated 1.4.2002.

On the other hand, it is submitted by the learned counsel for the respondents that initially respondent No.1 was appointed on the post of Teacher Grade II on 8.9.1990 (Annexure 5), after making selection, in accordance with law. Since then, she is performing her duties with her best ability, integrity, honesty and efficiency.

The appointment order of Smt.Mithlesh Kumari Yadav – Respondent No.1 dated 8.9.1990 (Annexure 5) reads as under :-

" रा. उ. वि. 940/ 90-91 कार्यालय आदेश दि. 8-9-90

श्री/ श्रीमति/ सुश्री/ मिथलेश कुमारी यादव निवासी बीकानेर जन्म तिथि 20.4.62 पत्नि श्री दिवान सिंह योग्यता/ शै. M.A. B.SC. प्र. B. Ed. को रा. उ. वि. नं. 1 में प्रारम्भिक वेतन रू. 1260/- एवम् नियमानुसार महंगाई भत्ता वेतन श्रृंखला 1200 - 2050 में

अध्यापक के पद पर कार्यग्रहण तिथि से नियुक्त किया जाता है । यह नियुक्ति सत्रान्त तक दो वर्ष के परीविक्षा काल पर की गई है । उक्त तिथि के पश्चात् अध्यापक की सेवाऐं सन्तोषप्रद होने पर स्थायी की जावेगी ।

अध्यापक द्वारा इस आदेश के जारी होने के 15 दिवस में कार्यग्रहण न करने पर यह आदेश स्वत: निरस्त समझे जावेंगे ।

एस. डी. "

The petitioner – Institution is getting 60% financial aid from the State of Rajasthan under the Act, 1989 as well as the Rules, 1993 framed thereunder. Therefore, the petitioner – Institution falls within the purview of the 'State' as it is receiving grants-in-aid from the State Government and is governed by the Rules and Regulations framed by the State Government.

It is further submitted by the learned counsel for the respondents that the petitioner – Institution has passed the order dated 1.4.2002 of reduction in rank of Respondent No.1 Smt.Mithlesh Yadav, without providing her any opportunity of hearing and without following the due procedure of law. Respondent No.1 has been provided the salaries and allowances in the scale of teacher grade II, but the Institution – petitioner has adjusted the same in the name of Respondent No.1 on the post of teacher grade III for the purpose of taking aid from the State Government. In fact, Respondent No.1 has been appointed on the post of Teacher grade II by the Petitioner –

Institution. The pay fixation of Respondent No.1 has also been made by the petitioner – Institution vide order dated 23.3.2002 in accordance with the Rajasthan Civil Services Revised Pay Scale Rules, 1998 (hereinafter referred to as 'the Rules, 1998').

It is also submitted by the learned counsel for the respondents that after reduction in rank from teacher grade II to teacher grade III, vide order dated 1.4.2002, Respondent No.1 made representations dated 2.4.2002 and 3.4.2002 respectively to the petitioner – Institution, with the request to withdraw the order of reduction in rank dated 1.4.2002. She also made representations to other Authorities concerned, but no effective step for redressal her genuine grievance was taken by any of them.

It is argued by the learned counsel for the respondents that before passing the order dated 1.4.2002, no opportunity of hearing was given to Respondent No.1, nor approval of the Competent Authority as prescribed under Clause (ii) of Section 18 of the Act, 1989, was obtained in writing.

Apart from that, the procedure laid down under Section 18 of the Act was not followed by the petitioner – Institution. Thus, the action of the petitioner – Institution is arbitrary, illegal and punitive in nature and is not in accordance with the Act, 1989 as well as the Rules, 1993, framed thereunder.

Thus, the petitioner – Institution has no right to withdraw

the benefit of Grade II without providing an opportunity of being heard to Respondent No.1 and without obtaining approval in writing from the Competent Authority.

It is also argued that the Petitioner – Institution has not placed on record a copy of the Resolution dated 27.1.2002, said to have been passed by Managing Committee unanimously.

According to the learned counsel, the order dated 1.4.2002, passed by the petitioner – Institution is violative of the provisions of the Act, 1989 as well as the Rules, 1993, as mentioned above.

Apart from that, the impugned order which has been passed by the petitioner – Institution is in violation of the principles of natural justice as no opportunity of hearing was given to Respondent no.1. The order dated 1.4.2002 is violative of Articles 14, 16 and 21 of the Constitution of India and, in any case, not sustainable in the eye of law.

The object and reasons of the Rajasthan Non-Government Educational Institutions Act, 1989 and the Rajasthan Non-Government(Recognition, Grant-in-aid and Service Conditions etc.) Rules, 1993, framed thereunder, are for betterment of organisation and development of education in the Non-Governmental Education Institutions in the State of Rajasthan. Under Section 43 of the Act, 1989, powers have been conferred on the State Government to make Rules with regards to terms

and conditions of grants-in-aid to the recognised institutions.

Sections 18, 19, 21, 26 and 40 of the Act, 1989 and Rules 39 and 40 of the Rules, 1993, referred to by the learned counsel for the parties, which are relevant for deciding the controversy in hand, read as under :-

> **"Section 18. Removal, dismissal or reduction in rank of employees -**
>
> Subject to any rules that may be made in this behalf, **no employee of a recognised institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken:**
>
> **Provided that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorised by him in this behalf has been obtained :**
>
> Provided further that this section shall not apply,-
>
> (i)to a person who is dismissed or removed on the ground of conduct which led to his conviction on a criminal charge, or
> (ii)where it is not practicable or expedient to give that employee an opportunity of showing cause, the consent of Director of Education has been obtained in writing before the action is taken, or
> (iii)Where the managing committee is of unanimous opinion that the services of an employee cannot be continued without prejudice to the interest of the institution, the services of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing."
>
> **Section 19. Appeal to the Tribunal –**

(1) If a managing committee is aggrieved from the order of refusal made by the Director of Education under Section 18, it may prefer an appeal to the Tribunal constituted under Section 22 within ninety days of the date of receipt of such order.

(2) An employee aggrieved from an order of the managing committee made under Section 18, may prefer an appeal to the said Tribunal within ninety days of the date of receipt of such order."

"Section 21. Application to the Tribunal -

(1) Where there is any dispute between the management of a recognised institution and any of its employee with respect of the conditions of service, the management or the employee may make an application in the prescribed manner to the Tribunal and the decision of the Tribunal thereon shall be final.

(2) Any dispute of the nature referred to in sub-section (1) and any appeal of the nature referred to in Section 19, pending before the State Government or any officer of the State Government immediately before the commencement of this Act, shall, as soon as may be after such commencement, be transferred to the Tribunal for its decision."

"Section 26. Decision of the Tribunal to be final--

The decision of the Tribunal shall be final and no suit or other proceeding shall lie in any Civil Court with respect to matters decided by it."

"Section 40. Overriding effect of the Act -

The provisions of this Act shall have effect notwithstanding anything inconsistent contained in any instrument having effect by virtue of any law."

Rule 39. Removal or Dismissal from Service -

(1) The services of an employee appointed temporarily for six months, may be terminated by the management at any time after giving atleast one month's notice or one month's salary in lieu thereof. Temporary employee, who wishes to resign shall also give atleast one month's notice in advance or in lieu thereof deposit or surrender one month's salary to the management.

(2) An employee, other than the employee referred to in sub-rule (1), may be removed or dismissed from service on the grounds of insubordination, inefficiency, neglect of duty, misconduct or any other grounds which makes the employee unsuitable for further retention in service. But the following procedure shall be adopted for the removal or dismissal of an employee :-

(a) A preliminary enquiry shall be held on the allegations coming into or brought to the notice of the management against the employee.

(b) On the basis of the findings of the preliminary enquiry report, a charge sheet alongwith statement of allegations shall be issued to the employee and he shall be asked to submit his reply within a reasonable time.

(c) After having perused the preliminary enquiry report and the reply submitted by the employee, if any, if the managing committee is of the opinion that a detailed enquiry is required to be conducted, a three member committee shall be constituted by it in which a nominee of the Director of Education shall also be included.

(d) During the enquiry by such enquiry committee, the employee shall be given a reasonable opportunity of being heard and to defend himself by means of written statement as well as by leading evidence, if any.

(e) The enquiry committee, after completion of the detailed enquiry, shall submit its report to the management committee.

(f) If the managing committee, having regard to the findings of the enquiry committee on the charges, is of the opinion that the employee should be removed or dismissed from service, it shall;

(i) furnish to the employee a copy of the report of the enquiry committee.
(ii) Give him a notice stating the penalty of removal or dismissal and call upon him to submit within a specified time such representation as he may wish to make on the proposed penalty.

(g) In every case, the records of the enquiry together with a copy of notice given under sub-clause (f) (ii) above and the representation made in response to such notice if any, shall be forwarded by the managing committee to the Director of Education or any officer by authorised him in this behalf, for approval.

(h) On receipt of the approval as mentioned in sub-clause (g) above, the managing committee may issue appropriate order of removal or dismissal as the case may be and forward a copy of such order to the employee concerned and also to the Director of Education or the officer authorised by him in this behalf:

Provided that the provisions of this rule shall not apply :-

(i) To an employee who is removed or dismissed on the ground of conduct which led to his conviction on a criminal charge, or
(ii) Where it is not practicable or expedient to give that employee an opportunity of showing cause, the consent of the Director of Education has been obtained in writing before the action is taken, or

(iii) Where the managing committee is of unanimous opinion that, the services of an employee cannot be continued without prejudice to the interest of the institution, the services of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing"

Rule 40. Appeal –

(1) If the managing committee is aggrieved from the order of refusal made by the Director of Education under sub-rule (2) of rule 39, may prefer an appeal to the State Government within 90 days of the date of receipt of such order.

(2) An employee aggrieved from an order of the Managing Committee made under sub-rule (2) of rule 39 may prefer an appeal to the State Government within 90 days of the date of receipt of such order."

Section 18 provides that no employee of a recognised institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard. It further provides that no final order shall be passed by the Institution unless prior approval of the Director of Education is obtained in writing. However, Section 18 shall not apply (i) where a person who is dismissed or removed on the ground of conduct which led to his conviction on a criminal charge, or (ii) where it is not practicable or expedient to give that employee an opportunity of showing cause, the consent of Director of Education has been obtained in writing before the

action is taken, or (iii) where the managing committee is of unanimous opinion that the services of an employee cannot be continued without prejudice to the interest of the institution, the services of such employee can be terminated after giving him six months notice or salary in lieu thereof and the consent of the Director is obtained in writing. In the instant, Respondent No.1 – Smt.Mithlesh Yadav was not afforded a reasonable opportunity of hearing by the petitioner – Institution before passing the order dated 1.4.2002, reducing her rank from the post of Teacher Grade II to Teacher Grade II, nor the consent of the Director was obtained by the Petitioner – Institution in writing.

Section 19 (2), which is relevant for the purpose of deciding the present controversy, provides that if any employee is aggrieved by the order passed by the managing committee made under Section 18, such employee may prefer an appeal to the said Tribunal within 90 days of the date of receipt of such order. In the instant case, obviously, Smt.Mithlesh Yadav was aggrieved by the order dated 1.4.2002, by which her rank from Teacher Grade II to Grade III was reduced by the managing committee. Obviously, the order of reduction in rank dated 1.4.2002 attracted Section 18 of the Act. Thus, she has rightly preferred an appeal before the Tribunal under Section 19 of the Act.

Similarly, sub-section (1) of Section 21 of the Act, 1989

provides that when there is a dispute with regard to service conditions between the institution and its employee, the management or the employee can move an application before the Tribunal and the decision of the Tribunal thereon shall be final. Here also, service conditions of Smt.Mithlesh Yadav have been affected by order dated 1.4.2002, therefore, she has rightly filed an application before the Tribunal for redressal of her grievance.

Section 26 of the Act, 1989 provides that the decision of the Service Tribunal shall be final and no suit or other proceeding shall be taken in any Court with regard to the disputes decided by the Tribunal.

Lastly, Section 40 of the Act, 1989 provides that if there is any inconsistency in the Act and the Rules, then the provisions of the Act shall have a overriding effect on the Rules, as the Rules have been framed under the Act and they are governed by the Act.

Rule 39 of the Rules, 1993 pertains to the removal or dismissal of the employee from service. Sub-rule (1) of Rule 39 provides that the services of the employee, who is appointed temporarily for a period of six months, can be terminated by the management, at any time, after giving him one month's notice or one month's salary in lieu of notice. Similarly, sub-rule (2) provides that the employee as mentioned in sub-rule (1) can be

removed or dismissed from service on the grounds of subordination, inefficiency, neglect of duty or misconduct or any other grounds, which make the employee not suitable for the institution to retain his services. But, prior to that, the procedure mentioned in sub-clauses (a) to (h) (iii) of sub-rule (2) of Rule 39 has to be followed. It may be mentioned here that the controversy in the instant case is with regard to reduction in rank of the employee by the management without giving an opportunity of hearing to Respondent No.1.

Rule 40 of the Rules, 1993 provides the procedure for appeal by the managing committee as well as its employee. Sub-rule (1) of Rule 39 provides that if the managing committee is aggrieved by the order of the Director of Education made under sub-rule (2) of Rule 30, then it may prefer an appeal to the State Government within 90 days of the date of receipt of such order. Whereas, sub-rule (2) provides that if the employee is aggrieved from the order of the Managing Committee made under sub-rule (2) of Rule 39, then he may prefer an appeal to the State Government within 90 days of the date of receipt of such order. In the instant case, Respondent No.1 was aggrieved by the order made under Section 18 of the Act, 1989,as the dispute was pertaining to the reduction in rank, therefore, she has rightly preferred an appeal before the Tribunal under Section 19 of the said Act.

Leaned counsel for the respondents has relied on the case of Managing Committee, Gaur Vipra Primary School, Gopi Nath Marg, Jaipur v. Smt.Kusum Agarwal @ Kusum Lata Agarwal and Others (S.B.Civil Writ Petition No.2385/2001), decided by the Jaipur Bench on 16.9.2002 and Sevasadan Vinay Mandir Upper Primary School v. Suresh Kumar Lekhra & Others, S.B.Civil Writ Petition No.2201/2000 & 4 other petitions, decided by the Jaipur Bench on 6.7.2000, in which it was held by the learned Single Judge that since compliance of Section 18 of the Act, 1989 and Rule 39 of the Rules, 1993, has not been made by the management committee, prior to taking action against its employees, the Judgment of the learned Tribunal was upheld and the writ petitions filed by the management were dismissed.

Heard learned counsel for the parties.

A bare perusal of the appointment order (Annexure 5) shows that Respondent No.1 is M.A., B.Ed. And she was given the pay scale of Rs. 1200 – 2050. The appointment order (Annexure 5) does not reveal that she was appointed on the post of Teacher Grade III. It also does not reveal that the difference of amount (between Grade II and Grade III) is being paid by the Managing Committee, at its own level and grants-in-aid provided by the Government in the name of Respondent No.1 – Smt. Mithlesh Kumari Yadav, is for Grade III only. It is admitted position that vide order dated 1.4.2002 Respondent No.1 has

been reduced in rank from Teacher Grade II to Teacher Grade III and reversion order has been passed, without providing her an opportunity of hearing and without following the due process of law. It may be mentioned that the service conditions include reduction in rank, which attracts Section 18 of the Act, 1989. Apart from that, prior to issuing the order dated 1.4.2002, the consent of the Director was not obtained in writing as provided in Section 18 of the Act.

It appears that in order to get the benefit from the State Government, the name of Respondent No.1 was shown as Teacher Grade III in the record of the petitioner – Institution. It is not in dispute that the order dated 1.4.2002 has been passed by the petitioner – Institution without seeking the prior approval of the Competent Authority, i.e., Director of Education.

It is significant to note that prior to passing the order dated 1.4.2002, the requisite requirements of Section 18 of the Act, 1989 were not fulfilled by the petitioner – Institution. Rule 18 specifically provides that **no employee of a recognised institution shall be** removed, dismissed or **reduced in rank without affording a reasonable opportunity of hearing** and no final order in this regard shall be passed unless the **consent of the Director of Education is obtained in writing.** Thus, it is abundantly clear that while passing the order dated 1.4.2002, neither the opportunity of hearing was given, nor the consent of

the Director of Education was obtained in writing and the procedure as laid down in Section 18 has not been followed by the Petitioner – Institution. The order dated 1.4.2002, passed by the petitioner – Institution is punitive in nature. The dispute is between the petitioner-Institution and its employees, there appears to be no role of the State Government. It is the petitioner-Institution, which has taken illegal action of reduction in rank in contravention of Section 18 of the Act, 1989, by taking the pretext of financial constraints and abolition of posts by the State Government.

So far as the contention of the petitioner – Institution that the appeal ought to have been filed by an aggrieved employee to the State Government under sub-rule (2) of Rule 40 of the Rules, 1993, it may be mentioned here that had the order dated 1.4.2002 been passed by the Managing Committee under sub-rule (2) of Rue 39, then the employee would have preferred an appeal to the State Government within 90 days of the date of receipt of such order. But, here, in the instant case, the order of reducing in rank dated 1.4.2002 has been passed by the Petitioner – Institution, which attracts Section 18 of the Act, 1989 and is punitive in nature. Therefore, Respondent No.1 has rightly filed appeal before the Tribunal under Section 19 of the Act, 1989. It may be mentioned here that Rule 39 (2), which

provides the procedure for removal or dismissal from service of the employee, is not at all attracted.

The learned Tribunal has rightly held that prior to passing the order dated 1.4.2002 of reducing in rank, neither any prescribed procedure has been adhered to, nor any opportunity of hearing has been afforded to Respondent No.1, nor prior approval has been sought from the Director of Education by the Institution as mentioned Section 18 of the Act, 1989.

It may be mentioned that the petitioner-Institution has also not placed on record a copy of the Resolution dated 27.1.2002, said to have been passed by the Management Committee unanimously. The petitioner-Institution has also admitted in its reply to appeal (Annexure 2) before the Tribunal that Respondent No.1 – Smt.Mithlesh Yadav was working on the post of Teacher Grade II, though it was non-aided by the Government. It was not stated in Annexure 2 by the petitioner-Institution that difference amount (of pay scale of Teacher Grade II and Grade II) was being paid by the management committee, at its own level. No document in support of this stand has been produced by the petitioner-Institution. Nor any document in order to establish its case that Respondent No.1 was appointed on the post of Teacher Grade III by the petitioner-Institution, has been produced. Since no opportunity of hearing was afforded

to Respondent No.1 by the petitioner-Institution prior to passing the order dated 1.4.2002, obviously, there is a violation of the principles of natural justice. It is also abundantly clear that while passing the order of reduction in rank dated 1.4.2002, the procedure laid down under Section 18 of the Act, 1989, was not followed by the Petitioner-Institution. The order dated 1.4.2002, passed by the petitioner-Institution, against the provisions of the Act, 1989 as well as the Rules, 1993, is punitive in nature. Even if there is any inconsistency in the Act and the Rules, the provisions of the Act will prevail over the Rules by virtue of Section 40 of the Act as the Rules have been framed under the Act of 1989.

The Tribunal has rightly quashed and set aside the order dated 1.4.2002, passed by the Petitioner-Institution. Thus, in this view of the matter, contentions of the learned counsel for the petitioner-Institution are not, at all , sustainable in the eye of law.

In view of the aforesaid discussion, the decision of the learned Tribunal dated 19.11.2004 (Annexure 4) is perfectly valid and justified and is in accordance with law. It is based on sound reasonings and calls for no interference by this Court under Articles 226 & 227 of the Constitution of India.

In the result, I do not find any merit in the instant petition. The same is, therefore, dismissed, in limine.

(R.P.VYAS),J.

Scd.